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4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF OREGON**
6 **PORTLAND DIVISION**
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9 **MELINDA WILSON,**

No. 3:12-cv-01480-HU

10 Plaintiff,

**FINDINGS AND
RECOMMENDATION**

11 v.

12 **CITY OF PORTLAND**, a municipal
13 corporation, and **JOHN DOE POLICE
OFFICER NOS. 1 through 4**,

14 Defendants.

15
16 Melinda Ann Wilson
17 317 N.E. Killingsworth Ave.
Portland, OR 97211
Telephone: (503) 933-9731

18 *Pro Se Plaintiff*

19
20 Robert T. Yamachika
Deputy City Attorney
21 Email: Rob.Yamachika@portlandoregon.gov
Office of City Attorney
22 1221 S.W. 4th Avenue, Rm 430
Portland, OR 97204
23 Telephone: (503) 823-4047
Facsimile: (503) 823-3089

24 Attorney for Defendant City of Portland

25 **HUBEL, J.,**

26 This 42 U.S.C. § 1983 case was removed from Multnomah County
27 Circuit Court on August 15, 2012. On September 21, 2012, the court
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1 set a Rule 16 Conference by telephone for November 5, 2012, at
2 10:00 a.m., and mailed a copy of the notice to plaintiff Melinda
3 Wilson ("Wilson") at her address of record: 317 N.E. Killingsworth
4 Ave., Portland, Oregon 97211. The notice was not returned to the
5 court. On November 5, 2012, the court placed the conference call.
6 After calling the only two telephone numbers included in the record
7 for Wilson, both of which appeared to be disconnected numbers, the
8 court called a third telephone number, which was provided by
9 defense counsel, and was connected to Wilson's voice mail. She was
10 not available.

11 On November 7, 2012, the court entered an order requiring
12 Wilson to show cause in writing as to why this case should not be
13 dismissed for failure to attend the Rule 16 Conference on November
14 5, 2012, and failure to prosecute her civil claims. A show cause
15 hearing date was set for January 7, 2013 at 10:00 a.m. Notably,
16 the show cause order made clear that, unless Wilson provided the
17 court with a reliable telephone number at which she could be
18 reached by December 28, 2012, the January 7 hearing would take
19 place in person in Courtroom #9B, Mark O. Hatfield Courthouse, 1000
20 S.W. Third Ave., Portland, Oregon. Wilson was also warned that
21 failure to comply with the order would result in a dismissal of
22 this action, without prejudice.

23 On November 28, 2012, Wilson filed a response to the order to
24 show cause, wherein she generally reiterated and elaborated on the
25 allegations set forth in her complaint. Wilson also provided her
26 address and telephone number. She offered no explanation for
27 failing to attend the November 5, 2012 Rule 16 conference.

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1 On January 7, 2012, counsel for the defendant, City of
2 Portland, appeared in person for the show cause hearing. The court
3 attempted to reach Wilson by telephone, at the number it confirmed
4 was the current and accurate telephone number for Wilson, but the
5 call was immediately connected only to her voice mail once again.
6 Wilson also failed to appear in person for the proceeding in lieu
7 of a phone appearance, as required by the order to show cause.

8 Based on the foregoing, the undersigned recommends that this
9 case be dismissed without prejudice based on Wilson's failure to
10 prosecute and to comply with court orders to attend two hearings
11 ordered by the court. See *Kent v. City of Sacramento*, No. 2:07-cv-
12 02361, 2011 WL 6012413, at *4 (E.D. Cal. Dec. 1, 2011) (explaining
13 that courts can dismiss a *pro se* plaintiff's action under Federal
14 Rule of Civil Procedure 41(b) *sua sponte* for failing to prosecute
15 or comply with the rules of civil procedure or the court's orders).

SCHEDULING ORDER

17 The Findings and Recommendation will be referred to a district
18 judge. Objections, if any, are due **January 28, 2013**. If no
19 objections are filed, then the Findings and Recommendation will go
20 under advisement on that date. If objections are filed, then a
21 response is due **February 14, 2013**. When the response is due or
22 filed, whichever date is earlier, the Findings and Recommendation
23 will go under advisement.

24 Dated this 9th day of January, 2013.

/s/ Dennis J. Hubel

DENNIS J. HUBEL
United States Magistrate Judge